

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION**

JAMES MALLON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 1:19-cv-00954-LMB-JFA
	)	
INTERNATIONAL BUSINESS	)	
MACHINES CORPORATION,	)	
	)	
Defendant.	)	

**JOINT MOTION TO EXTEND DEFENDANT’S DEADLINE TO FILE RESPONSIVE  
PLEADING**

Plaintiff James Mallon (“Plaintiff”) and Defendant International Business Machines Corporation (“IBM” or “Defendant”) hereby jointly request that the Court extend Defendant’s time to file a responsive pleading to Plaintiff’s Complaint. In support thereof, the parties state as follows:

1. Plaintiff filed his Complaint in this action on July 22, 2019. [Doc. No. 1].
2. Currently pending before the United States Court of Appeals for the Fourth Circuit is *Fessler v. IBM*, No. 18-2497.
3. Fessler, a former sales representative for IBM, sued IBM alleging it owes him purportedly unpaid commissions. IBM previously moved to dismiss Fessler’s complaint, and this Court granted IBM’s motion. Fessler then appealed that decision to the Fourth Circuit.
4. IBM plans to move to dismiss Plaintiff’s Complaint on similar grounds that it moved to dismiss Fessler’s Complaint.
5. The decision in *Fessler* may assist this Court in determining similar issues in this case.

6. This Court previously granted a Joint Motion and extended IBM's deadline to file a responsive pleading until November 22, 2019 while the parties awaited a ruling in *Fessler*. [Doc. No. 11].

7. On November 7, 2019, the United States Court of Appeals for the Fourth Circuit noticed the *Fessler* case for oral argument during the January 28, 2020 – January 31, 2020 argument session.

8. The parties anticipate a ruling following oral argument.

9. Accordingly, to save judicial resources and the time and expense of briefing, the parties hereby request that the Court extend Defendant's deadline to file a responsive pleading ninety (90) days or until February 20, 2020.

10. The parties state that this request is made in good faith and not for the purposes of delay.

11. A proposed order is attached hereto as Exhibit A for the Court's consideration.

Respectfully submitted this 14<sup>th</sup> day of November, 2019.

/s/ David Hilton Wise

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**ATTORNEYS FOR PLAINTIFF**

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JAMES MALLON,

Plaintiff,

v.

INTERNATIONAL BUSINESS  
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Civil Action No. 1:19-cv-00954-LMB-JFA

**CERTIFICATE OF SERVICE**

I hereby certify that on this 14<sup>th</sup> day of November, 2019, I electronically filed the foregoing **JOINT MOTION TO EXTEND DEFENDANT'S DEADLINE TO FILE RESPONSIVE PLEADING** via the Court's CM/ECF system, which will automatically provide electronic notification of the same to the following:

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